

April 5, 2004

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APR 7 2004

Public Disclosure Commission



Public Disclosure Commission
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Kurt Young, Chief Political Finance Specialist

711 Capitol Way, #205
P.O. Box 40908
Olympia, WA 98504-0908

RE: Request For New Rulemaking
Tribal Disclosure of Election and Campaign Contributions

Dear Commission:

The Washington STAAR Alliance (Standing To Affirm American Rights) is an informal network of community education groups located in twelve counties of the state, with individual participants located throughout the State. Our focus is on federal Indian policy that impacts or impairs state and local government, denying citizens the protections of their state, and the enumerated and inalienable rights of the state and federal Constitution.

We ask that you formally pursue a rule making process that fully explores and implements new guidelines and enforcement mechanisms to protect the election process of Washington State from unreported and unlimited infusions of contributions from tribal governments, tribal gambling revenue, and individual tribal members. It is politically naive and governmentally unsound to assume that the State's election process is yet unaffected by entities that claim an immunity from state governance or state lawsuit, while inordinately funding political parties, incumbents, challengers for state office. The PDC's Mission Statement supports this letter to the PDC whose primary duty of requisite campaign disclosure preserves for the "*People*" - the voters of Washington - the ability to make an *equitable and informed vote*.

The Public Disclosure Commission was created and empowered by Initiative of the People to provide timely and meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with disclosure provisions, contribution limits, campaign practices and other campaign finance laws.

On March 3, 2004 the Third Appellate District Court for the State of California ruled that the California Fair Political Practices Commission (FPPC) could sue an Indian tribe to force it to comply with reporting requirements for campaign contributions in accordance with California state law.

Two concurring appellate judges (Sims and Blease) concluded that the doctrine of tribal immunity "has no foundation in the federal Constitution or in any federal statute but is rather a doctrine created by the common law power of the Supreme Court." The court noted that:

"Government has a substantial interest in (1) providing the electorate with information as to where political campaign money comes from; (2) deterring corruption and avoiding the appearance of corruption by exposing large contributions to the light of publicity; and (3) detecting violation of contribution limits. (Buckley v. Valeo (1976) 424 U.S. 1, 67-68 [upholding reporting requirements of federal election campaign statutes against a First Amendment challenge].)" [Agua Caliente Band of Cahuilla Indians v. Superior Court of Sacramento County and Fair Political Practices Commission, CA 3d Appellate Ct., March 3, 2004].

It further concurred:

On the other hand, the State has a constitutional right, under article IV, section 4 and the Tenth Amendment to the United States Constitution, to maintain a republican form of government. That form of government entails government by representatives elected by the People. The right to sue to enforce the (Political Reform Act) PRA is necessary to preserve a republican form of government free of corruption and therefore has constitutional stature. The constitutional right of the State to sue to preserve its republican form of government trumps the common law doctrine of tribal immunity. The FPPC can therefore sue the Tribe. [Agua Caliente Band of Cahuilla Indians v. Superior Court of Sacramento County and Fair Political Practices Commission, CA 3d Appellate Ct., March 3, 2004].

Washington's Fair Campaign Practices Code for candidates and political committees, set forth in WAC 390-32-010, is merely one-half of the required check and balance system of a republican form of government. What candidates report and disclose is part of the process, but not all. What organizations and individuals contribute and report by law is the other half of the requisite check and balance system. The fact that no other government may contribute to an election is inequitable in and of itself. To then be immune from reporting is a disgraceful, and we submit, unconstitutional, distortion of the Washington political process. It is impossible to compare what candidates report and what is contributed to candidates, if contributors such as Indian tribes are exempt from disclosing their contributions. The opportunity for corruption and collusion is replete absent an open election process in which all participants in Washington's elections abide by the very same rules.

Reinforced by the Administrative Procedures Act [RCW 34.05], Washington's Public Disclosure Commission (PDC) is empowered in RCW 42.17.370 to "adopt, promulgate, amend and rescind suitable administrative rules to carry out the policies and purpose of this chapter..." "Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year."

The California appellate court was quite clear in its ruling regarding the Tenth Amendment to the United States Constitution as it respects the several states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. But what are these powers that are reserved to the states? Surely one such power is the power and duty to maintain a republican form of government, since maintenance of that form of government is mandated by article IV, section 4 of the United States Constitution, which provides in relevant part, "[t]he United States shall guarantee to every State in this Union a Republican Form of Government . . . The right and duty of the state to maintain a republican form of government necessarily includes the right to elect representatives and to protect against corruption of the political process.

"The United States Supreme Court said recently, "To the extent that large [political] contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined." (Nixon v. Shrink Missouri Gov't. PAC (2000) 528 U.S. 377, 388.)"

"The state's constitutional right trumps the Tribe's common law immunity, because no court--not even the United States Supreme Court--has the common law power to make up a rule that conflicts with the United States Constitution."

[Agua Caliente Band of Cahuilla Indians v. Superior Court of Sacramento County and Fair Political Practices Commission, CA 3d Appellate Ct., March 3, 2004].

The PDC Executive Director was notified by the undersigned when the courageous California FPPC Executive Director first filed the above lawsuit in the Fall of 2002, and the PDC has received intermittent progress reports since then. The California 3rd Appellate District has now ruled affirmatively for the FPPC, your Commission's counterpart.

We citizens of Washington State assure you that this matter is not going away, and will be continuously brought to your attention until action is taken that restores equality and equity for the individual citizen voters of Washington State. We further remind you that the PDC's historical origins were founded upon an "*Initiative of the People*" Your first duty is to preserve a fair and informed election process for the *people - the voters -* of Washington State.

The Washington STAAR Alliance therefore suggests that the PDC begin the following:

- 1) A focused, fact-finding process precedent to development of new rules and enforcement mechanisms that ensure that the integrity of Washington's political is restored and remains shielded from corrupting unreported cash flows emanating from entities that place themselves apart and immune from Washington State law.
- 2) Public hearings to take factual information and to record the voice of Washington citizens.
- 3) Development of rules that are consistent with the State's intent to be as vigilant in its protection of Washington State's election process, as the sister State of California.
- 4) Development of appropriate enforcement procedures, inclusive of citizen complaints and expanded PDC investigative powers to discover surreptitious, unreported contributions.

Until all participants who desire to participate in Washington State's election process are following the same state laws, Washington State's republican form of government, mandated in the Guarantee Clause of the U.S. Constitution and forged through fair elections, is endangered and rapidly eroding to mere silent auctions.

Sincerely,



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